

The United States of America (“United States”) and the Walker River Tribe (“Tribe”) (collectively “Plaintiffs”) jointly move the Court to enter an Order that allows service by publication for this sub-proceeding. The paragraphs below are provided in support of this motion.

I. Introduction

Since 2000, Plaintiffs have followed the Court’s instruction and taken those steps necessary to notify water rights holders throughout the Walker River Basin of the *First Amended Counterclaim of the United States of America* (July 31, 1997; Doc. B-59) (“U.S. Counterclaim”) and the *First Amended Counterclaim of the Walker River Paiute Tribe* (Doc. B-58) (“Tribal Counterclaim”). During that time, the United States has mailed over 4,000 service packages, personally served over 1,500 persons and entities, and obtained review and approval of its efforts by the Court and Defendants in nineteen Service Reports and seven proofs of service by process servers.¹ As a result of these efforts, over 3,100 defendants have been joined to this subproceeding C-125-B.

¹ Over the years, the United States has provided the Court numerous reports on the progress of the United State’s service efforts. *See* Doc. 481; 497; 513; 649; 740; 802; 838; 1035; 1126; 1178; 1269; 1316; 1479; 1578; 1609; 1717; 1953; and 2057. These reports were approved by the Court. *See* Doc. 520; 521; 665; 708; 800; 854; 897; 1047; 1158; 1266; 1301; 1382; 1572; 1610; 1701; 1728; 2074; and 2114. Further, the United States has periodically filed proofs of service with the Court. *See* Doc. 717; 1319; 1375; 1586; 1670; and 2059. To the extent necessary, these proofs of service were addressed, if at all, at subsequent status hearings. *See e.g.*, Doc. 734 (minutes of the Court September 28, 2005).

The United States has completed its effort to personally serve those groups of Walker River Basin water rights holders that this Court previously identified.² Plaintiffs now seek to complete and conclude service in this sub-proceeding by publishing notice of this sub-proceeding pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure (and by incorporation, pursuant to Rule 4(e)(1) of the Nevada Rules of Civil Procedure and California Code of Civil Procedure 415.50). As discussed with the Court at previous status conferences, publication will serve two purposes. First, publication will constitute service on unknown defendants who remain

² In its *Case Management Order* (April 18, 2000, Doc. B-108) (“CMO”), the Court directed the United States to notify the following nine categories of water rights holders of the pendency of the U.S. and Tribal Counterclaims:

- a. Successors in interest to all water rights holders under the Decree (April 14, 1936), modified, Order of Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940);
- b. All holders of surface water rights under the laws of the States of Nevada and California in the Walker River Basin;
- c. All holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake Valley, and 110B (Walker Lake Subarea of the Walker Lake Valley);
- d. All holders of permits or certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), and 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin);
- e. All users of groundwater for irrigation in California in the Walker River Basin;
- f. All holders of “vested rights” to the use of groundwater under the laws of the State of Nevada within the Walker River Basin;
- g. All municipal providers in Nevada in the Walker River Basin who currently use groundwater;
- h. All municipal providers in California in the Walker River Basin who currently use groundwater; and
- i. All industrial users in Nevada in the Walker River Basin who currently use groundwater.

CMO at 4 – 6 at ¶ 3(a) – (i).

unknown. Second, publication will provide a general notice to the public of this sub-proceeding and identify where filings and other relevant case documents can be reviewed without charge.

See CMO at 6-7 ¶ 5.

II. Argument

A. The Court should order service by publication to complete and conclude service associated with this sub-proceeding

As described above, the United States has now served each identifiable person or entity associated with the specific category of water rights holders previously identified by the Court. Such service was perfected either by personal service or by securing a written waiver of the party and eliminating the need for personal service. Although each relevant water rights holder has been identified and served pursuant to Fed. R. Civ. P. 4, the Court and the Primary Parties have long contemplated that Plaintiffs would issue a published notice at the conclusion of service efforts. *See* CMO at CMO at 6-7 ¶ 5. Although this subproceeding arises in an effort to modify a decree issued long ago, such publication should be issued otherwise in conformity with the publication requirements of the Federal Rule of Civil Procedure.

Fed. R. Civ. P. 4(e)(1) provides that individuals may be served by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Service by publication in the State of Nevada is governed by Rule 4(e)(1) of the Nevada Rules of Civil Procedure. In general, in Nevada service by publication is permissible after the serving party establishes that it has exercised due diligence in his/her attempt to serve another party. Nev. R. Civ. P. 4(e)(1)(i). The requirements for publication under Nevada law are captured in Rule 4(e)(1)(iii) of the Nevada Rules of Civil

Procedure. “The order shall direct the publication to be made in a newspaper, published in the State of Nevada, to be designated by the court or judge thereof, for a period of 4 weeks, and at least once a week during said time.” Nev. R. Civ. P. 4(e)(1)(iii).

Service by publication in the State of California is governed by Section 415.50 of the California Code of Civil Procedure. As a general matter, a California court may order service by publication when service cannot be affected with reasonable diligence by any other method provided for in the Code. Cal. Civ. Proc. Code § 415.50(a). Publication may be ordered for cases in which the “party to be served has or claims an interest in real or personal property in this state.” *Id.* The requirements for publication under California law are captured in section 6064 of the California Government Code. “Publication of notice pursuant to this section shall be once a week for four successive weeks. Four publications in a newspaper regularly published once a week or oftener, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice commences with the first day of publication and terminates at the end of the twenty-eighth day, including therein the first day.” *See also* Cal. Civ. Proc. Code § 415.50(b) (publication shall occur in a paper “most likely to give actual notice to the party being served.”).

1. Service efforts by the United States are now otherwise complete

As the Court predicted earlier, implementing service as required by the CMO has been neither economical nor easy.³ The United States spent significant time and resources (over \$1.5

³ When it required Rule 4 service, the Court stated: “We are sympathetic to the struggles of the United States and the Tribe to serve parties for C-125-B. . . . Altering water rights on a river

million in contract services and hundreds of personnel hours throughout the federal government) to notify by mail, and, when necessary, personally serve the persons and entities that the Court directed it to identify, locate, and serve. Without exception, the United States has completed this task.

2. Service by publication will provide notice to potential unknown defendants

Over fifteen years ago, this Court permitted service by publication on unidentified holders of Walker River water rights in the companion sub-proceeding C-125-C. Minute Order (April 1, 1997; C-125-C) (Doc. C-99) at 4; *see also* Minutes of the Court (June 13, 1997; C-125-C) (Doc. C-114 at 1) (confirming that the April 1997 Order is “only with respect to unidentified and unserved potential defendants.”). Service by publication is now appropriate in sub-proceeding C-125-B to serve potential defendants who fall into one of the categories identified by the Court but who remain unknown. *See id.*; *see also* CMO at 6 ¶ 5 (service by publication appropriate for “all other claimants to surface and groundwater rights not identified or who are unknown”).

3. Service by publication will provide notice to interested members of the public

Finally, throughout these proceedings, the Court has recognized that members of the public might have an interest in this case and expressed a continuing interest to keep the public aware of the activities associated with this case to the extent that such interests exist. In fact, the Court established its public website for this sub-proceeding in part to inform the public about pleadings and other matters addressed in this sub-proceeding. Publication will further inform the

system divided more than sixty years ago is no easy task. There will be considerable time and expense in pursuing an action.” *Order* at 6, 8 n.2 (June 11, 2001, Doc. B-522).

public about the Court's website and this sub-proceeding.

B. Content of the Proposed Notice

Fed. R. Civ. P. 4 requires that service must provide notice of the pendency of a legal action. "[T]he core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections." *Henderson v. United States*, 517 U.S. 654, 672 (1996) (footnote omitted). Adequate notice is a constitutional requirement that flows "from the Due Process Clause" *Omni Capital Int'l v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987), quoting *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1987).

The United States has prepared the content of the *Notice by Publication in Lieu of Summons* that it proposes be published. See Attachment B. The proposed Notice provides a clear and succinct statement concerning this sub-proceeding and satisfies both Rule 4 and due process requirements. Importantly, the proposed Notice informs the public of the Internet address of the Court's website, through which copies of all pleading may be examined.

C. Proposed Order Approving Publication

A proposed Order approving the proposed Notice and instructing the United States to publish such notice is attached as Attachment C. Though the Nevada and California rules of civil procedure state that only "a newspaper" should be used for publication, the United States proposes that notice should be published in the three newspapers in which the U.S. Board of

Water Commissioners has been required to publish its annual budget notices: the *Mason Valley News* (Yerington, Nevada), the *Mammoth Times*, (Mammoth Lakes, California), and the *Record Courier* (Gardnerville, Nevada). Further, to ensure broad distribution of the notice, the United States will also publish the notice in the *Mineral County Independent* (Hawthorne, Nevada). As described above, both Nevada and California procedural rules require that publication be made in a newspaper once a week for 4 weeks. *See* fn. 2 and 3, *supra*.

III. Conclusion

To complete service in this sub-proceeding, this Court should approve the *Notice by Publication in Lieu of Summons* (Attachment B) and enter the attached order allowing service of process by publication for the party defendant identified and for all unknown defendants (Attachment C).

Dated: January X, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of January, 2015, I electronically filed the foregoing JOINT MOTION TO ALLOW SERVICE BY PUBLICATION with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses that are registered for this case. Furthermore, pursuant to the Court's *Superseding Order Regarding Service and Filing in Subproceeding C-125-B on and by All Parties* (Doc. 2100), I certify that I have served either notice of this document or a copy of this document to the following non-CM/ECF participants by U.S. Mail this same day:

XX

By /s/
Andrew "Guss" Guarino

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	IN EQUITY NO. C-125-RCJ
)	Subproceedings: C-125-B
Plaintiff,)	3:73-CV-00127-RCJ-WGC
)	
WALKER RIVER PAIUTE TRIBE,)	
)	
Plaintiff-Intervenor,)	(Proposed) ORDER TO ALLOW
vs.)	SERVICE BY PUBLICATION
)	
WALKER RIVER IRRIGATION DISTRICT,)	
a corporation, et al.,)	
)	
Defendants.)	
_____)	

This matter is before the Court on the *Joint Motion to Allow Service by Publication*.

Upon consideration of the motion and for good cause shown, the Court enters the following order to allow service by publication.

1. Approval of the Proposed Notice

In its motion, the United States presented the Court with a proposed Notice by Publication *in Lieu* of Summons (Attachment B to the motion). The Court approves the content of the proposed notice. The content of the notice shall be necessarily modified to notify those concerned that any Notice of Appearance and Intent to Participate shall be filed with the Court by _____, 2015.

2. Publications within which the Notice Shall Appear

The content of the notice shall appear within the following newspaper publications: the

Mason Valley News (Yerington, Nevada), the *Mammoth Times*, (Mammoth Lakes, California), the *Record Courier* (Gardnerville, Nevada); and the *Mineral County Independent* (Hawthorne, Nevada).

3. Duration of Publication

The United States shall complete publication of the notice by publishing the notice in each newspaper identified above once a week for four (4) successive weeks with five (5) days intervening between the respective publication dates not counting each publication day. Such publication shall be completed within sixty (60) days of this Order.

4. Notice of Completion

Once the last notice has appeared in the newspapers identified above, the United States shall notify this Court of the completion of publication of the notice.

IT IS SO ORDERED this ____ day of _____, 2015.

Hon. William G. Cobb
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

IN EQUITY NO. C-125
SUBFILE NO. C-125-B
3:73-CV-00127-RCJ-WGC

vs.

WALKER RIVER IRRIGATION
DISTRICT,
a corporation, et al.,

**(Proposed) NOTICE BY
PUBLICATION IN LIEU OF
SUMMONS**

TO:

ALL PERSONS AND ENTITIES CLAIMING WATER RIGHTS WITHIN THE STATES OF NEVADA AND/OR CALIFORNIA IN THE SURFACE AND/OR UNDERGROUND WATERS OF THE WALKER RIVER BASIN, INCLUDING PERSONS PREVIOUSLY JOINED AS DEFENDANTS IN THE ABOVE-CAPTIONED ACTION, AND ALL KNOWN AND UNKNOWN CLAIMANTS OF INTEREST.

YOU ARE HEREBY NOTIFIED that a civil action has been filed in the United States District Court in Reno, Nevada, entitled *United States v. Walker River Irrigation District* and assigned the following court docket number: In Equity C-125, Subfile C-125-B (3:73-CV-00127-RCJ-WGC). In this action, the Walker River Paiute Tribe ("Tribe") and the United States of America ("United States") on behalf of the Tribe, claim surface and groundwater rights on the Tribe's reservation. In addition, the United States claims surface and groundwater rights at various locations throughout the Walker River Basin on behalf of certain federal agencies, two other Indian Tribes, and numerous Indian allottees.

The Federal Court has identified the following nine categories of persons and entities to be served as defendants in this subproceeding:

1. successors in interest to all water rights holders under the Decree (April 14, 1936), modified, Order of Entry of Amended Final Decree to Conform to Writ of Mandate, Etc. (April 24, 1940);
2. all holders of surface water rights under the laws of the States of Nevada and

- California in the Walker River Basin ;
3. all holders of permits or certificates to pump groundwater issued by the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake Valley, and 110B (Walker Lake Subarea of the Walker Lake Valley);
 4. all holders of permits or certificates to pump groundwater issued by the State of Nevada within Sub Basins 106 (Antelope Valley), and 109 (East Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin);
 5. all users of groundwater for irrigation in California in the Walker River Basin;
 6. all holders of “vested rights” to the use of groundwater under the laws of the State of Nevada within the Walker River Basin;
 7. all municipal providers in Nevada in the Walker River Basin who currently use groundwater;
 8. all municipal providers in California in the Walker River Basin who currently use groundwater; and
 9. all industrial users in Nevada in the Walker River Basin who currently use groundwater.

Case Management Order at ¶ 3 (Doc. 108).

If you are a water rights holder in any of the above categories and wish to participate in this action or object to the United States/Walker River Tribe’s claims, you are required to file a Notice of Appearance and Intent to Participate by _____, 2015 in the United States District Court for the District of Nevada. A Notice of Appearance and Intent to Participate must include the following information: a) name, mailing address, telephone number, and e-mail address (if any) of the person/entity submitting the notice; b) name, mailing address, telephone number, and e-mail address of attorney (if any) who will represent the identified person/entity; and c) a description of the nature of all water rights that you hold in any of the above categories in the Walker River system and a description of the property to which each water right attaches. Entities (*e.g.*, corporations, trusts, etc.) that wish to file a notice of intent to participate must be represented by an attorney. Attorneys appearing on the behalf of any person or entity must file a Notice of Appearance and Intent to Participate using the Court’s EM/ECF filing system. Any person not represented by an attorney must file a Notice of Appearance and Intent to Participate a by mailing it to the Court at: Chief Deputy Clerk, United States District Court for the District of Nevada, 400 South Virginia Street, Suite 301, Reno, Nevada 89501. And, any person not represented by an attorney must elect whether to receive ongoing notice by e-mail or by mail (see *Superseding Order Regarding Service and Filing in Subproceeding C-125-B on and By All Parties*, Doc. 2100 (“Superseding Order”)).

Under the Court’s Case Management Order (Doc. 108) governing this phase of the case, you are not obligated to answer either the FIRST AMENDED COUNTERCLAIM filed by the United States of America (Doc. 59) or the FIRST AMENDED COUNTERCLAIM filed by the

Walker River Paiute Tribe (Doc. 58) until further order of the Court. Further, this sub-proceeding will not determine the water rights of any water rights holder other than the United States and the Indian tribes and Indian allottees on whose behalf the United States acts (including the Walker River Tribe).

If you file a Notice of Appearance and Intent to Participate you will become a defendant in this case. If you do not file a Notice of Appearance and Intent to Participate, the Court will address and resolve the United States/Walker River Tribe claims without your participation.

Additional Information

The Court has established a website for this case so all parties will have easy, free access to documents filed in this case. The website is located at <https://ecf.nvd.uscourts.gov/casedisplay> or by selecting “Walker River” on the District of Nevada’s official website (www.nvd.uscourts.gov). A number of documents appear at that website that may be of use to you and inform you further of the nature and scope of this proceeding. Your attention is directed to the following important documents that can be found at the Court’s website:

- 1) the United States’ First Amended Counterclaim (Doc. 59);
- 2) the Walker River Tribe’s First Amended Counterclaim (Doc. 58);
- 3) the Case Management Order (Doc. 108);
- 4) the Order Regarding Changes in Ownership of Water Rights (Doc. 207);
- 5) the Supplemental Case Management Order (Doc. 1865); and
- 6) Superseding Order (Doc. 2100)

This Notice is issued consistent with Rule 4 of the Federal Rules of Civil Procedure and the Case Management Order (Doc. 108), and as amended by the Supplemental Case Management Order (Doc. 1865).

By: Lance Wilson, Clerk of Court